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EXAMINER	
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ART UNIT	PAPER NUMBER
3689	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/797,284	KIRCHHOFF ET AL.	
	Examiner	Art Unit	
	HEIDI RIVIERE	3689	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 May 2011*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *49-52,54-59 and 81-93* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *49-52,54-59 and 81-93* is/are rejected.

7)☒ Claim(s) *49,83 and 85* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed **17 May 2011** have been fully considered but they are not persuasive.

2. Previous rejections are moot with cancellation of claims 1-48, 53 and 69-80.

3. Applicant argues that the previous 35 USC 112 rejection cannot be applied to claims 49, 59 81 and 82. The previous 35 USC 112 rejection was applied to currently cancelled claims 36-47 for not providing adequate structural support in the specification for the means plus function limitation and are moot because these claims are currently cancelled. Furthermore, Applicant attempts to find support for the current claims 49, 59, 81 and 82 in the original specification by referencing Table 2 of the original specification and US Patents 6/436,036 and 6/040, 531 which are not referenced in the current application or in US Patent 7/523,040. These patents can not be considered part of the original specification. However, since the claims are cancelled the rejection is now moot.

4. In regards to the previous 35 USC 102(e) rejection. Applicant argues that the current amendments are not taught by the Mault 069 reference. (see Supra). The currently pending claims are rejected under 35 USC 103(a) utilizing the Mault 069, Mault 164 and the Grana references as discussed below.

Despite Applicant's arguments to the contrary, Mault 069 does not only teach RMR or caloric balance. The Mault 069 reference not only calculates the RMR of a client but also provides a system for weight management. The Mault 069 allows the

portable device to connect to a computer for the uploading of client related data. (Figs. 18-19) The system then displays user identification information, an exercise log, meal log, recipes, daily caloric information and forecast of future caloric data.. (Figs. 20-29) Also, even though Applicant argues that Mault 069 is just for RMR calculation, Applicant admits on page 16 of the arguments that RMR calculation necessitates an updated weight data. However, because the current amendments and some of the new claims are not taught by the Mault 069 reference please note the new 35 USC 103 rejections below which incorporate the Grana, Applicant's Own Admission and Mault-164 references.

Therefore, the rejections are not withdrawn.

5. Please note the claim objections and 35 USC 103 rejections below.

Claim Objections

6. Claims 49, 83 and 85 are objected to because of the following informalities: Claims 49 and 83 teach "receiving, by a computer system, un updated data". This limitation has a grammatical error. Applicant also has two claim 85. Appropriate correction is required.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. **Claims 49-50, 52, 54-59, and 83-91 are** rejected under 35 U.S.C. 103(a) as being unpatentable over **Mault (2002/0062069 A1)** (hereinafter "**Mault–069**") in view of **Grana (US 2006/0053184 A1)** (hereinafter "**Grana**").

9. **With respect to Claim 49: (currently amended)** Mault-069 teaches:

- Receiving, by a computer system, identification of a user, wherein the identification of the user comprising an initial profile representative of characteristics of the user comprising a initial weight of the user; (Mault 069 – fig. 6 – start weight entered into system; target weight linked to diet planning in goal modules, goals can be revised; figures 8a, 8b, 8c, 8d, 8e, and 8f and paragraph 57, that entered target weight information affects nutrient targets which include calories. Paragraph 51 notes that the health management software provides for the "Entry of food consumption through a food log with a search capability; entry of activity information combined with a search tool (alternatively using data from an activity sensor))

Mault 069 does not teach, however Grana teaches:

- providing by a computer system based at least in part on the initial profile associated with the user, at least one first dietary recommendation, wherein the at least one first dietary recommendation is based at least in part on the initial weight of the user and comprising, for at least one first food, a first quantity, a first type, or a combination thereof, which is recommended to

control body weight of the user; (Grana: paragraph 36 - the system's weekly menu screen displays all meals for the week)

- Providing, by a computer system, a plurality of interoperable selectable weight control elements for access by the user to personalize the at least one first dietary recommendation; forming, by a computer system, a dataset based on the initial profile associated of the user and the at least one first dietary recommendation personalized by the user; (Grana: paragraph 52 – user can change the ingredients in the recipes provided; paragraph 34 – personal data is stored in a personal database)
- Receiving, by a computer system, un updated data associated with the user, wherein the updated data comprising an updated weight of the user; Automatically updating, by a computer system, the dataset in accordance with the received updated data such that, based in part on the updated weight of the user, the at least one first dietary recommendation personalized by the user is automatically updated in the first quantity, the first type, or the combination thereof (Grana: paragraph 29 – user has the option to edit or delete information; paragraphs 37 and 41 – system monitors and gauges personal data entered for changes;) .
- Automatically altering, by a computer system, at least one second dietary recommendation to be provided to the user, wherein the at least one second dietary recommendation is based at least in part on the updated dataset and comprising, for at least one second food, a second quantity, a second type, or

a combination thereof, which is recommended to control body weight of the user; (Grana: paragraphs 37 and 41 – system monitors and gauges personal data entered for changes; this information utilized from the medical database and for example is automatically accounted for; "Display field 502 may include a two-panel display where one side shows the meal or recipe and the other side indicates a plurality of alternatives or replacements") and

- storing, by a computer system, the updated dataset, wherein the updated dataset comprising the at least one second dietary recommendation and being utilized by the **user to control body weight. (Mault 069: fig. 6 – start weight entered into system; target** weight linked to diet planning in goal modules, goals can be revised; figs. 7A-7B, 8A-8F - personal profile data includes name; paragraph 58 – diet log database)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Mault 069 and Grana because this combines the prior art elements of weight control and altering and suggesting diet recommendations to yield the predictable result of weight management. Maul 069 teaches diet planning by having the user enter personal information. Grana teaches the ability to suggest alternative food because of new personal data.

10. **With respect to Claims 50: (currently amended)** Mault-069 teaches the plurality of interoperable selectable weight control elements include at least one of food and exercise items. (Mault 069 – figures 9 and 10 – food and activity items noted).

11. **With respect to Claim 52: (currently amended)** Mault-069 discloses the at least one first and second dietary recommendations comprising predetermined meals each having a total food value associated therewith. (Mault-069: Paragraph 99 - "information such as nutritional value of the selected meal, [including] caloric, fat and vitamin analysis.").

12. **With respect to Claims 54: (currently amended)** Mault-069 teaches the plurality of interoperable selectable weight control elements include a journal interface operable to provide a daily listing of foods for consumption in accordance with the personalized weight control program. (Mault-069: Figs 20-24 – daily food consumption information entered, food list presented, target caloric goal noted).

13. **With respect to Claim 55: (Previously Amended)** Mault-069 however, discloses the foods are alterable to establish a different daily listing of foods for consumption. (Mault-069: Figs 20-24 – daily food consumption information entered, food list presented, target caloric goal noted)

14. **With respect to Claim 56: (Original)** Mault-069 discloses crediting future daily listings based on a total food value of the daily listing being below a target value. (Mault-069: Figs 6, 20-24 – daily food consumption information entered, food list presented, target caloric goal noted)

.**With respect to Claim 57: (Original)** Mault-069 teaches the target value is a maximum number of values as a function of food consumption and activities allotted by the weight control program. (Mault-069: Figs 20-25 – daily food consumption information entered, activities noted, foods list presented, target caloric goal noted).

15. **With respect to Claim 58: (Original)** Mault-069 discloses crediting is performed for a predetermined number of days. (Mault-069: Figs. 6 and 11A-11B as well as supporting text; Paragraphs 54, 55, 60 and 62 – daily balance screen and weekly balance screen).

16. **With respect to Claim 59: (currently amended)** Mault-069 teaches the limitations cited above. Mault 069 does not teach, however Grana teaches receiving, by a computer system, from the user, at least one recipe, comprising a plurality of ingredients; and automatically updating, by a computer system, based on the updated dataset, information on what quantity of a meal made in accordance with the at least one recipe is appropriate to control body weight of the user. (Grana: paragraph 52 – user can change the ingredients in the recipes provided).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Mault 069 and Grana because this combines the prior art elements of weight control and diet recommendations to yield the predictable result of weight management. Mault 069 teaches diet planning by having the user enter personal information. Grana teaches the ability to suggest recipes for meals because of new personal data.

17. **With respect to Claim** 83. (New) Mault 069 teaches:

i) memory having at least one region for storing computer executable program code; and ii) a processor for executing the program code stored in the memory, wherein the program code comprising: software code to receive identification of a user, wherein the identification of the user comprising an initial profile representative of characteristics

of the user comprising a initial weight of the user; (Mault 069 – fig. 6 – start weight entered into system; target weight linked to diet planning in goal modules, goals can be revised; figures 8a, 8b, 8c, 8d, 8e, and 8f and paragraph 57, that entered target weight information affects nutrient targets which include calories. Paragraph 51 notes that the health management software provides for the "Entry of food consumption through a food log with a search capability; entry of activity information combined with a search tool (alternatively using data from an activity sensor); paragraphs 84 and 87 – memory and processor taught; page 11, claims 4-5 – weight management program is a software program)

software code to store the updated dataset, wherein the updated dataset comprising the at least one second dietary recommendation and being utilized by the user to control body weight. (Mault 069: fig. 6 – start weight entered into system; target weight linked to diet planning in goal modules, goals can be revised; figs. 7A-7B, 8A-8F - personal profile data includes name; paragraph 58 – diet log database)

Mault 069 does not teach, however Grana teaches:

software code to provide, based at least in part on the initial profile associated with the user, at least one first dietary recommendation, wherein the at least one first dietary recommendation is based at least in part on the initial weight of the user and comprising, for at least one first food, a first quantity, a first type, or a combination thereof, which is recommended to control body weight of the user; (Grana: paragraph 36 - the system's weekly menu screen displays all meals for the week)

software code to provide a plurality of interoperable selectable weight control elements for access by the user to personalize the at least one first dietary recommendation; software code to form, by a computer system, a dataset based on the initial profile associated of the user and the at least one first dietary recommendation personalized by the user; (Grana: paragraph 52 – user can change the ingredients in the recipes provided; paragraph 34 – personal data is stored in a personal database)

software code to receive un updated data associated with the user, wherein the updated data comprising an updated weight of the user; software code to automatically update the dataset in accordance with the received updated data such that, based in part on the updated weight of the user, the at least one first dietary recommendation personalized by the user is automatically updated in the first quantity, the first type, or the combination thereof; (Grana: paragraph 29 – user has the option to edit or delete information; paragraphs 37 and 41 – system monitors and gauges personal data entered for changes;)

software code to automatically alter at least one second dietary recommendation to be provided to the user, wherein the at least one second dietary recommendation is based at least in part on the updated dataset and comprising, for at least one second food, a second quantity, a second type, or a combination thereof, which is recommended to control body weight of the user; (Grana: paragraphs 37 and 41 – system monitors and gauges personal data entered for changes; this information utilized from the medical database and for example is automatically accounted for)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Mault 069 and Grana because this combines the prior art elements of weight control and altering and suggesting diet recommendations to yield the predictable result of weight management. Mault 069 teaches diet planning by having the user enter personal information. Grana teaches the ability to suggest alternative food because of new personal data.

18. **With respect to Claim 84**. (New) Mault teaches the plurality of interoperable selectable weight control elements include at least one of food and exercise items. (Mault 069 – figures 9 and 10 – food and activity items noted).

19. **With respect to Claim 85.** (New) Mault-069 teaches the limitations cited above. Mault 069 does not teach, however Grana teaches the software code to form the dataset represent a function of a predetermined set of rules operable to control weight. (Grana: Fig. 2, item G – Education/feedback includes nutrition education, health/wellness education and demos of equipment usage etc.)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Mault 069 and Grana because this combines the prior art elements of weight control and creating rules of what to eat to yield the predictable result of weight management and control. Mault 069 teaches diet planning by having the user enter personal information. Grana teaches the ability to suggest provide education and feedback to enhance the weight management and control process.

20. **With respect to Claim 85.** (New) Mault-069 teaches the limitations cited above. Mault 069 does not teach, however Grana teaches the at least one first and second dietary recommendations comprising predetermined meals each having a total food value associated therewith. (Grana: paragraph 41- "Display field 502 may include a two-panel display where one side shows the meal or recipe and the other side indicates a plurality of alternatives or replacements")

21. **With respect to Claim 86.** (New) Mault-069 teaches the limitations cited above. Mault 069 does not teach, however Grana teaches the plurality of interoperable selectable weight control elements include a journal interface operable to provide a daily listing of foods for consumption in accordance with the personalized weight control program. (Grana: Fig. 2, item G – Education/feedback includes nutrition education, health/wellness education and demos of equipment usage etc.)

22. **With respect to Claim 87**. (New) Mault-069 teaches the limitations cited above. Mault 069 does not teach, however Grana teaches for controlling body weight to support the online personalized weight control program of claim 83, wherein the foods are alterable to establish a different daily listing of foods for consumption. . (Grana: paragraph 41- "Display field 502 may include a two-panel display where one side shows the meal or recipe and the other side indicates a plurality of alternatives or replacements")

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Mault 069 and Grana because this combines the prior art elements of weight control and altering and suggesting daily food

recommendations to yield the predictable result of weight management. Mault 069 teaches diet planning by having the user enter personal information and meal options. Grana teaches the ability to suggest alternative food for daily and weekly menus because of new personal data.

23. **With respect to Claim 88.** (New) Mault 069 teaches software code to credit future daily listings based on a total food value of the daily listing being below a target value. (Mault-069: Figs 6, 20-24 – daily food consumption information entered, food list presented, target caloric goal noted)

24. **With respect to Claim 89.** (New) Mault 069 teaches the target value is a maximum number of values as a function of food consumption and activities allotted by the weight control program. (Mault-069: Figs 20-25 – daily food consumption information entered, activities noted, foods list presented, target caloric goal noted).

25. **With respect to Claim 90.** (New) Mault 069 teaches the crediting is performed for a predetermined number of days. (Mault-069: Figs. 6 and 11A-11B as well as supporting text; Paragraphs 54, 55, 60 and 62 – daily balance screen and weekly balance screen)

26. **With respect to Claim 91**. (New) Mault-069 teaches the limitations cited above. Mault 069 does not teach, however Grana teaches software code to receive, from the user, at least one recipe, comprising a plurality of ingredients; and software code to automatically update, based on the updated dataset, information on what quantity of a meal made in accordance with the at least one recipe is appropriate to control body

weight of the user. (Grana: paragraph 52 – user can change the ingredients in the recipes provided)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Mault 069 and Grana because this combines the prior art elements of weight control and altering and suggesting diet recommendations to yield the predictable result of weight management. Mault 069 teaches diet planning by having the user enter personal information. Grana teaches the ability to suggest alternative food because of new personal data.

27. **Claim 51** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Mault-069** in view of Grana and further in view of **Applicants Own Admission in the Background of the specification (hereinafter "Background")**.

28. **With respect to Claim 51: (currently amended)** Mault-069/Grana discloses the limitations as shown in the rejections above. Mault-069/Grana does not teach forming of the dataset is a function of a predetermined set of rules operable to control weight. However, Applicant's own admission discloses forming of the dataset is a function of a predetermined set of rules operable to control weight. (Background: Specification, Page 2, paragraph 5 – weight control program must adhere to rules).

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Mault 069, Grana and Background because of the goal to have a predetermined set of rules to help control weight because of the

motivation to "define the specific foods, times to eat and exercises to be performed." (Background: Page 2, paragraph 5).

29. **Claims 81, 82 and 92 and 93 are** rejected under 35 U.S.C. 103(a) as being unpatentable over **Mault (2002/0062069 A1)** (hereinafter "**Mault–069**") in view of **Mault et al. (2002/0027164 A1)** (hereinafter "**Mault–164**")

30. **With respect to Claim 81.** (New) Mault 069 teaches the limitations cited by the references above. Mault 069 does not teach, however Mault 164 teaches the received at least one recipe is shared by the user with a community of users of the online personalized weight control program. (Mault 164 – paragraph 74 – the diet log information, physical activity data and the person's weight information can be transmitted to the computer system and "other authorized people (e.g. physician, health-related business employee, dietician, personal trainer, etc.) may access the data e.g. via a website")

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Mault 069 and Mault 164 because of the motivation encourage users by providing access to more information. Mault 069 teaches adding personal and milestone data to the system and receiving meal planning help. Mault 164 teaches sharing the personal information with a physician.

31. **With respect to Claim 82**. (New) Mault 069 teaches the limitations cited by the references above. Mault 069 does not teach, however Mault 164 teaches the at least one shared recipe is associated with at least one portion of information from the

updated dataset of the profile of the user and wherein the at least one portion of information is shared with the community of users of the online personalized weight control program. (Mault 164 – paragraph 74 – the diet log information, physical activity data and the person's weight information can be transmitted to the computer system and "other authorized people (e.g. physician, health-related business employee, dietician, personal trainer, etc.) may access the data e.g. via a website")

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Mault 069 and Mault 164 because of the motivation encourage users by providing access to more information. Mault 069 teaches adding personal and milestone data to the system and receiving meal planning help. Mault 164 teaches sharing the personal information with a physician.

32. **With respect to Claim 92.** (New) Mault 069 teaches the limitations cited by the references above. Mault 069 does not teach, however Mault 164 teaches the received at least one recipe is shared by the user with a community of users of the online personalized weight control program. (Mault 164 – paragraph 74 – the diet log information, physical activity data and the person's weight information can be transmitted to the computer system and "other authorized people (e.g. physician, health-related business employee, dietician, personal trainer, etc.) may access the data e.g. via a website")

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Mault 069 and Mault 164 because of the motivation encourage users by providing access to more information. Mault 069

teaches adding personal and milestone data to the system and receiving meal planning help. Mault 164 teaches sharing the personal information with a physician.

33. **With respect to Claim 93.** (New) Mault 069 teaches the limitations cited by the references above. Mault 069 does not teach, however Mault 164 teaches the at least one shared recipe is associated with at least one portion of information from the updated dataset of the profile of the user and wherein the at least one portion of information is shared with the community of users of the online personalized weight control program. (Mault 164 – paragraph 74 – the diet log information, physical activity data and the person's weight information can be transmitted to the computer system and "other authorized people (e.g. physician, health-related business employee, dietician, personal trainer, etc.) may access the data e.g. via a website")

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Mault 069 and Mault 164 because of the motivation encourage users by providing access to more information. Mault 069 teaches adding personal and milestone data to the system and receiving meal planning help. Mault 164 teaches sharing the personal information with a physician.

CONCLUSION

34. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Heidi Riviere whose telephone number is 571-270-1831. The examiner can normally be reached on Monday-Friday 9:00am-5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on 571-272-6805. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Heidi Riviere/

Examiner, Art Unit 3689